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APR 26 2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Appellants:	David A. Cheresh et al.)	
)	
Application No.	09/538,248)	
)	
Filed:	March 29, 2000)	
)	Appeal No. 2006-2889
For:	METHODS USEFUL FOR TREATING)	
	VASCULAR LEAKAGE AND EDEMA)	
	USING SRC OR YES TYROSINE)	
	KINASE INHIBITORS)	
)	
Examiner:	Rebecca E. Prouty)	
)	
Group Art Unit:	1652)	Attorney Docket No. <u>TSRI 651.3</u>

REQUEST FOR REHEARING
UNDER 37 C.F.R. § 41.52(a)(1)

Mail Stop BPAI
Board of Patent Appeals and Interferences
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Appellants respectfully request rehearing on the following point believed to have been overlooked by the Board.

The Board's Decision on Appeal finds at page 3 that "[t]he Calderwood patent teaches that Src kinases are among the tyrosine kinase inhibitors that may be inhibited by the disclosed compounds" (emphasis added), and at page 5 that a reasonable inference from the teachings of Burchat 2000 is that Burchat is using human c-src, or that the results obtained with the src would have been reasonably expected to predict a compound's activity on human src. On the basis of these findings the Board holds that Calderwood teaches compounds that are inherently src inhibitors.

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(Application No. 09/538,248)

A retrospective view of inherency, however, is not a substitute for some teaching or suggestion which supports the selection and sue of the claimed subject matter. In re Newell, 13 U.S.P.Q.2d 1248 (Fed. Cir. 1989), cert. denied 493 U.S. 814 (1989). There is no such teaching of record.

Here, the purported inherency is based on a "reasonable inference." That is not enough. It has been well established that inherency must be a necessary result and not merely a possible result. In re Oelrich, 212 U.S.P.Q. 323 (CCPA 1981). The fact that prior art may inherently have the characteristics of the claimed subject matter is not sufficient. Ex parte Skinner, 2 U.S.P.Q.2d 1788 (BPAI 1986). Either it does or it does not.

It is respectfully submitted that the requisite showing of inherency to support an anticipation rejection of claims 1, 2, 17 and 18 has not been established by the record.

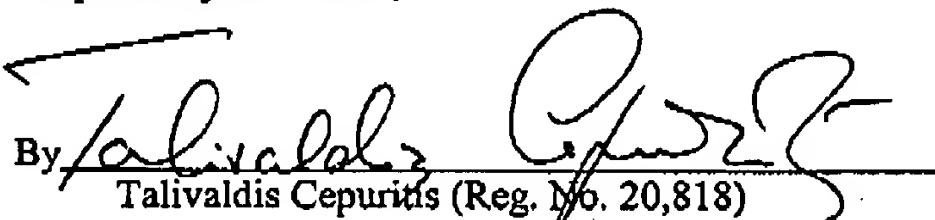
Inasmuch as Calderwood taken with Burchat 2000 does not anticipate the use of human c-src tyrosine kinase inhibitors to ameliorate tissue damage due to vascular leakage, the rejection of claims 3, 4, 19, 20, 32 and 33 under 35 U.S.C. 103(a) also it not sustainable.

Please charge any fees concerning this matter to our Deposit Account No. 15-0508.

Reversal of the Examiner's rejections of the claims on appeal is deemed warranted.

Respectfully submitted,

April 26, 2007

By 
Talivaldis Cepuritis (Reg. No. 20,818)

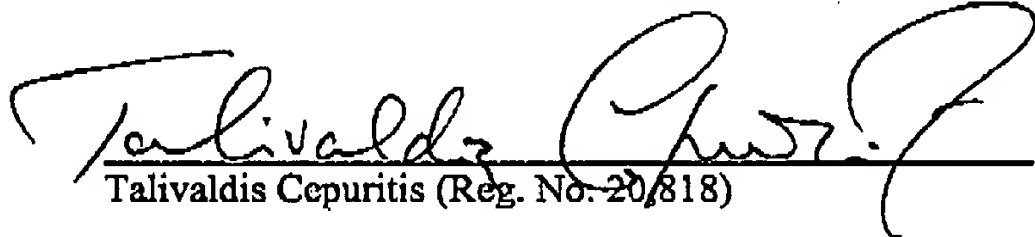
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Appeal No. 2006-2889 - - - - - 3
(Application No. 09/538,248)**CERTIFICATE OF FACSIMILE TRANSMISSION**

I hereby certify that this REQUEST FOR REHEARING UNDER 37 C.F.R. § 41.52(a)(1) is being transmitted by facsimile transmission to Fax No. 571-273-8300 on April 26, 2007.


Talivaldis Cepuritis (Reg. No. 20,818)